

LOTTERY GAMING SYSTEMS AND SERVICES AGREEMENT

THIS LOTTERY GAMING SYSTEMS AND SERVICES AGREEMENT (this "Agreement") is made and entered into this 20th day of January, 2004 (the "Effective Date"), by and between the TENNESSEE EDUCATION LOTTERY CORPORATION (the "TEL"), a public corporation and state instrumentality created pursuant to the Tennessee Education Lottery Implementation Law (Tenn. Code Ann. §§ 4-51-101 et seq.) (as may be amended from time to time, the "Act"), and GTECH CORPORATION, a Delaware corporation ("Vendor").

WITNESSETH:

WHEREAS, the TEL was created to organize and operate a state lottery in the State of Tennessee (the "Lottery");

WHEREAS, Vendor, on behalf of itself and its Subcontractors (as defined in Section 3(a) of this Agreement) (Vendor and Subcontractors being sometimes referred to collectively as the "Vendor Team") submitted a proposal to the TEL for Lottery Gaming Systems and Services dated October 27, 2003 consisting of Technical Volume 1, Technical Volume 2 and the Appendices, incorporated herein by this reference (the "Proposal") to the TEL in response to the request for proposals issued by the TEL entitled "Request for Proposal for Online Lottery Game Services and Lottery Gaming System and Services" dated October 3, 2003, and incorporated herein by this reference (the "RFP"), as interpreted by the TEL's answers to questions concerning the RFP, which were made available by the TEL on October 13, 2003, and incorporated herein by this reference (the "Questions and Answers"); and

WHEREAS, subject to the terms and conditions hereinafter set forth, the TEL desires to retain Vendor to provide lottery gaming systems and services (collectively, the "Gaming Systems and Services") to the TEL, and Vendor desires to provide the Gaming Systems and Services for the TEL.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the premises, the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the parties hereto hereby agree as follows:

1. SERVICES

Subject to the terms and conditions set forth in this Agreement, the TEL retains Vendor to provide the Gaming Systems and Services to the TEL as contemplated by this Agreement, the Questions and Answers, the RFP and the Proposal, and Vendor agrees to render the Gaming Systems and Services to the TEL. Notwithstanding anything herein to the contrary, in the event of any inconsistency or conflict among the Act, this Agreement, the Proposal, the Questions and Answers, and/or the RFP, the Act will control the terms of this Agreement, as may be amended, which shall control the Questions and Answers, the terms of the Questions and Answers shall control the RFP, and the terms of the RFP shall control the Proposal.

2. DUTIES AND RESPONSIBILITIES OF THE VENDOR TEAM

(a) The members of the Vendor Team will work in conjunction with the TEL and the other vendors, subcontractors, employees, agents, retailers and consultants of the TEL. The members of the Vendor Team will provide the Gaming Systems and Services to the TEL as detailed in the RFP, the Questions and Answers and the Proposal, as modified by this Agreement, and will perform such specific services and provide such deliverables and equipment as requested, from time to time, orally or in writing, by the Chief Executive Officer of the TEL (the “CEO”) or the CEO’s designee(s) consistent with the RFP, the Questions and Answers and the Proposal, as modified by this Agreement. Except as otherwise set forth herein, Vendor agrees that all systems, deliverables, equipment and services to be provided to the TEL under this Agreement shall be capable of the full level of capacity and capability required by this Agreement, the RFP, the Questions and Answers and the Proposal.

(b) Appropriate employees of the members of the Vendor Team shall meet regularly with the CEO or her designee(s) and shall establish work plans, implementation schedules and timetables for completion as and when reasonably required by the CEO or her designee(s).

(c) Vendor hereby agrees to use its best efforts to make available to the TEL, to the extent required for the effective and timely performance of its obligations under this Agreement, such of its employees and the employees of the other members of the Vendor Team as may be necessary or appropriate for the timely performance of the obligations of the Vendor Team pursuant to this Agreement. No such employee or agent of Vendor or any member of the Vendor Team shall undertake or participate in, during the term of this Agreement, any other engagement that will interfere with the completion of the work contemplated by this Agreement. Vendor will provide to the TEL a list of the employees of the Vendor Team who will be performing services pursuant to this Agreement. Anytime there is a change in said list Vendor will immediately notify the TEL.

3. SUBCONTRACTORS

(a) No member of the Vendor Team will subcontract or otherwise assign any or all of its duties or obligations under this Agreement to any person without the prior written consent of the TEL in each instance, which consent may be withheld in the TEL’s sole discretion. Vendor will provide the TEL with the name, qualifications, experience and expected duties of each proposed subcontractor under this Agreement each time it desires to retain a subcontractor. Any subcontractor that is approved by the TEL for work pursuant hereto will become a “Subcontractor” for purposes of this Agreement and must execute such agreements or other documentation as may be necessary pursuant to the Act or as the TEL may reasonably require.

(b) Upon the request of the TEL, Vendor will promptly provide the TEL with copies of all subcontracts and other agreements entered into by Vendor with respect to its obligations under this Agreement. No such subcontract or other agreement may contain any terms or conditions inconsistent or in conflict with the terms and conditions contained in this

Agreement. In the event of any such inconsistent or conflicting provisions, such inconsistencies or conflicts will be resolved in favor of this Agreement.

(c) The TEL shall have the right, at any time and from time to time, to instruct Vendor not to use the services of any Subcontractor or employee of Vendor or a Subcontractor in connection with the work to be performed for the TEL under this Agreement, and Vendor agrees to comply with all such instructions.

(d) Notwithstanding anything herein to the contrary, Vendor will remain fully liable and responsible for all work to be performed under this Agreement, whether or not subcontracted to or performed by a Subcontractor or any other person retained by Vendor or under Vendor's control, and Vendor will ensure the compliance of its employees, and of each Subcontractor and such Subcontractor's employees, with the terms of this Agreement, the Act and all other applicable laws which govern the performance of services pursuant to this Agreement and such other written standards or policies as the TEL may establish from time to time.

4. INDEPENDENT CONTRACTOR

(a) Both the TEL and Vendor, in the performance of this Agreement, will be acting in their own separate capacities and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees, agents or partners of the other party for any purposes whatsoever. Neither party will assume any liability for any injury (including death) to any persons or any damage to any property or other claim arising out of the acts or omissions of the other party or any of its agents, employees or subcontractors. It is expressly understood and agreed that Vendor is an independent contractor of the TEL in all manners and respects and that no member of the Vendor Team is authorized to bind the TEL to any liability or obligation or to represent that it has any such authority.

(b) Vendor shall be solely responsible for all payments to Subcontractors and all compensation, withholding taxes and benefits for its employees and for providing all necessary unemployment and workmen's compensation insurance for its employees.

5. COMPENSATION

(a) As full and complete compensation for all goods and services provided by Vendor pursuant to this Agreement, the TEL will pay Vendor, and Vendor will accept on behalf of the entire Vendor Team, an amount equal to one and twenty-four hundredths percent (1.24%) of:

(i) the TEL's gross online lottery ticket sales revenue less cancelled transactions during the term of this Agreement; plus

(ii) the retail sales price of "instant tickets activated" (i.e., instant tickets, coupons or similar items made available for sale at an authorized sales location and for which activation has been acknowledged via a Lottery computer system implemented

within the scope set forth in this Agreement, the RFP, the Questions and Answers or the Proposal) less the retail sales price of instant tickets:

- (A) returned,
- (B) available as “free ticket” prizes,
- (C) returned as defective
- (D) issued by the TEL as a promotion, or
- (E) blocked because such tickets are lost or stolen

during the term of this Agreement. Instant tickets, coupons and similar items for which receipt of delivery is not acknowledged via the Lottery’s computer system but which are otherwise processed by such system, also shall be deemed “instant tickets activated” upon first processing via such system. Other products supplied by the TEL’s instant ticket suppliers are specifically excluded from “instant tickets activated” unless processed by the Lottery’s computer system. This compensation formula is effective as of the Instant Ticket Start-up Date (as hereinafter defined). For purposes of this Agreement, the “Instant Ticket Start-up Date” means 12:01 am, January 20, 2004] or such earlier date as is mutually agreed to by the TEL and Vendor in writing. Said date shall be the date on which Vendor begins providing lottery system services to the TEL pursuant to this Agreement. For purposes of this Section 5, a “week” shall mean the period from the beginning of operations on Sunday morning and ending the following Sunday morning at the close of operations.

(b) Subject to the availability of funds and any other restrictions imposed by the Act or this Agreement, the TEL will pay to Vendor all uncontested amounts due under this Agreement on a weekly basis, within fourteen (14) calendar days from the end of a billing week and subject to setoff or offset for all sums owed by the Vendor Team to the TEL.

(c) Within thirty (30) days after the expiration of the term of this Agreement, the parties shall in good faith mutually agree upon the reimbursement amount due the TEL with respect to “instant tickets activated” during the term of this Agreement and (i) returned, (ii) available as “free ticket” prizes, (iii) returned as defective, (iv) issued by the TEL as a promotion, or (v) blocked because such tickets are lost or stolen. The parties hereby agree that the historical percentages based on the twenty-six (26) week period immediately prior to the termination of this Agreement for each of the categories set forth in the subparagraphs of this Section 5(c) may be used as the guidelines for such negotiations. Vendor shall pay such reimbursable amount to the TEL within thirty (30) days after the conclusion of such negotiations.

6. TERM

(a) Unless sooner terminated in accordance with the provisions of Section 19 of this Agreement, and subject to the provisions of Section 26 of this Agreement, the term of this Agreement shall commence as of the Effective Date and shall end at the close of operations on April 9, 2011 (the “Expiration Date”) and the TEL shall compensate the Vendor for the approximately seven (7) years commencing on the Instant Ticket Start-up Date and ending on the Expiration Date (unless earlier terminated pursuant to the terms of this Agreement).

(b) Vendor acknowledges and agrees that, prior to the expiration of the term of this Agreement, the TEL will award a new contract for replacement of the lottery gaming systems, equipment and services provided by Vendor under this Agreement and that Vendor has no right or expectation in or to any such new contract. Vendor further agrees that the TEL may use the final one hundred eighty (180) days of the term of this Agreement to convert to the use of such replacement lottery gaming systems, equipment and services; provided that Vendor shall continue to be compensated in accordance with Section 5 of this Agreement during such one hundred eighty (180) day period. Vendor shall cooperate fully and in good faith and shall assist the TEL and the new contractor, to the extent reasonable and practical, to accomplish such conversion in a timely and efficient manner, at no additional cost to the TEL. Vendor shall have the right to take all necessary precautionary measures to protect its confidential and proprietary information in connection with such cooperation.

7. WORK STANDARD

(a) Vendor hereby agrees that it and all members of the Vendor Team shall at all times comply with and abide by all terms and conditions set forth in this Agreement, all applicable written policies and procedures of the TEL and all requirements of the Act. Vendor further agrees that all members of the Vendor Team shall perform their respective duties and responsibilities as set forth in this Agreement by following and applying the highest professional and technical guidelines and standards.

(b) Vendor hereby agrees that it and all members of the Vendor Team will perform their respective duties and responsibilities as set forth in this Agreement with integrity and dignity and free from political influence, collusion and fraud. Vendor further agrees that no members of the Vendor Team will solicit or accept, or attempt to solicit or accept, any kickbacks or other inducements from any offerer, supplier, manufacturer or subcontractor in connection with the performance of its obligations under this Agreement.

(c) If the TEL becomes dissatisfied with the work product of or the working relationship with any of the employees, Subcontractors or consultants assigned to perform services under this Agreement by members of the Vendor Team, the TEL may require the prompt replacement of any or all of such employees, Subcontractors or consultants. Personnel identified in the Proposal as performing services under this Agreement will continue to perform such services in their designated capacities until such services are completed unless they cease to be employed by a member of the Vendor Team, become physically or mentally unable to complete their responsibilities or unless the TEL requests their removal, in which case a person or persons of suitable competency and acceptable to the TEL, in its discretion, will be substituted forthwith.

(d) Nothing in this Section 7 shall be construed to prevent Vendor from using the services of others to perform tasks ancillary to those tasks that directly require the expertise of such key personnel, including secretarial, clerical and common labor duties. Vendor shall at all times remain responsible for the performance of all necessary tasks under the scope of this Agreement, whether performed by key personnel or other workers.

(e) Nothing in this Agreement shall prohibit the TEL from retaining the services of any person to perform any services on its behalf, whether or not such or similar services were initially contemplated to be performed by a member of the Vendor Team. The TEL is not prohibited by this Agreement from retaining the services of any person to perform any services it requires, and it is under no obligation to exclusively use the services of the Vendor Team. If the TEL desires to add an item provided by a person other than the Vendor Team to Vendor's hardware or software systems provided pursuant hereto, then Vendor and the TEL agree to negotiate in good faith an amendment to this Agreement (if necessary) or a separate written agreement which contains all of the mutually agreed-upon terms and conditions, including, without limitation, any price, liquidated damages and other terms. To the extent Vendor is capable of providing any such comparable item, the TEL will consider any offer tendered by Vendor with respect thereto. Vendor shall have the right to take all necessary precautionary measures to protect its confidential and proprietary information in connection with any such amendment to this Agreement or any such separate agreement.

(f) Vendor shall designate an employee, who is acceptable to the TEL, as its primary contact with the TEL for purposes of this Agreement.

8. PROGRESS REPORT AND SYSTEM IMPLEMENTATION

To assure the TEL that its work under this Agreement is progressing and is being performed in a manner consistent with the TEL's wishes, Vendor will meet with the CEO or designee daily during implementation and at least weekly thereafter.

9. CHANGES IN WORK

By written or oral request by the CEO or her designee(s) to any member of the Vendor Team, the TEL may from time to time make changes in the services, deliverables or equipment to be provided by the Vendor Team, or the place of delivery or performance of such services or any requested deliverables or equipment; provided, however, to the extent any such changes in services, deliverables or equipment are outside the scope of any of this Agreement, the RFP, the Questions and Answers or the Proposal, the TEL and Vendor shall in good faith negotiate mutually acceptable terms and compensation. The applicable members of the Vendor Team shall promptly comply with such requests and take all necessary or appropriate actions to effect such change.

10. BOOKS AND RECORDS

(a) Within six (6) months of the end of each member of the Vendor Team's fiscal year, each member of the Vendor Team shall provide to the TEL on an annual basis a copy of the audited financial statements of such member or, in the case of Vendor, Vendor's parent, for such year, together with the opinion of its independent auditors with respect to such financial statements; provided, however, that if any member of the Vendor Team other than Vendor does not have its financial statements for any fiscal year audited by an independent auditor, then such member of the Vendor Team shall deliver a copy of its unaudited financial statements, certified by its chief financial officer, for such fiscal year to the TEL within six (6) months of the end of such fiscal year. In the event such an opinion is not expressed without reservation or

qualification with respect to Vendor's audited financial statements, and the reasons for any such reservation or qualification materially and adversely affect the performance of Vendor under this Agreement, Vendor shall be deemed to have breached this Agreement, which shall give rise to the TEL's termination rights pursuant to Section 19 of this Agreement. To the extent that an individual or a privately held company of the Vendor Team marks any portion of such financial statements as trade secret or confidential information of such member of the Vendor Team, the TEL will make reasonable attempts to maintain the confidentiality of such portions of such financial statements; provided, however, under no circumstance will the TEL be liable to Vendor, any other member of the Vendor Team, or any other person for any disclosure of any such portions of such financial statements; provided, further, if challenged by any person requesting disclosure, the assertion that such financial statements involve trade secrets or confidential information shall be subject to the concurrence of the Attorney General of the State of Tennessee and, if necessary, a court of competent jurisdiction. All legal costs associated with said action will be the responsibility of Vendor

(b) On or before June 30, 2004, for the operating period ending May 31, 2004, and annually thereafter, Vendor shall provide to the TEL a Statement of Auditing Standards (SAS) No. 70 Third Party Controls Review performed by an independent CPA firm at Vendor's expense.

(c) The Vendor Team shall maintain documentation for all charges against the TEL under this Agreement or any modifications or amendments thereto. The books, documents, papers, accounting records and other evidence pertaining to products and/or services to be provided or performed or money received under this Agreement (A) shall be maintained for a period of five (5) full years from the date of the final payment and (B) shall be subject to audit or inspection at any reasonable time and upon reasonable notice by the TEL or its duly appointed representatives, including without limitation the Comptroller of the Treasury of the State of Tennessee. Each member of the Vendor Team shall make such materials available at its offices, and copies thereof shall be furnished to the TEL or its duly appointed representative by the Vendor Team member, at no cost to the TEL or its duly appointed representative, if requested by the TEL or its duly appointed representative. Such records shall be maintained in accordance with any applicable provisions of generally accepted accounting principles (or other applicable accounting principles or policies) and any other applicable procedures established by the TEL from time to time.

11. CONFIDENTIALITY; OWNERSHIP OF WORK PRODUCT

(a) For purposes of this Agreement, "TEL Confidential Information" means any and all items or information of the TEL which are: (i) marked "Confidential" or some such similar designation; or (ii) valuable, proprietary and confidential information belonging to or pertaining to the TEL or the Lottery that does not constitute a trade secret (as defined under applicable law) and that is not generally known but is generally known only to the TEL and those of its employees, independent contractors or agents to whom such information must be confided for business purposes, including, without limitation, information regarding the TEL's customers, suppliers, manufacturers and distributors. Notwithstanding the foregoing, TEL Confidential Information shall not include TEL information that is: (A) generally known to the public other than due to a disclosure by Vendor or any member of the Vendor Team; (B) already

known to public other than due to a disclosure by Vendor or any member of the Vendor Team; (B) already known to Vendor at the time it is disclosed by the TEL to Vendor; (C) independently developed by Vendor; (D) received by Vendor from a third party that Vendor believed in good faith had the right to make such disclosure; or (E) subject to disclosure under the Tennessee Public Records Act, Tenn. Code Ann. §§ 10-7-101 et seq. (the “Public Records Act”).

(b) For purposes of this Agreement, “Vendor Confidential Information” means any and all items or information of Vendor which are: (i) marked “Confidential” or some such similar designation; or (ii) valuable, proprietary and confidential information belonging to or pertaining to Vendor that does not constitute a trade secret (as defined under applicable law) and that is not generally known but is generally known only to Vendor and those of its employees, independent contractors or agents to whom such information must be confided for business purposes, including, without limitation, information regarding Vendor’s customers, suppliers, manufacturers and distributors. Notwithstanding the foregoing, Vendor Confidential Information shall not include Vendor information that is: (A) generally known to the public other than due to a disclosure by the TEL; (B) already known to the TEL at the time it is disclosed by Vendor to the TEL; (C) independently developed by the TEL; or (D) received” by the TEL from a party that the TEL believed in good faith had the right to make such disclosure.

(c) In recognition of the need of Vendor to protect its legitimate business interests, the TEL hereby covenants and agrees that with regard to any: (i) Vendor Confidential Information, at all times during the term of this Agreement and for a period of three (3) years following the expiration or termination of this Agreement for any reason; and (ii) Vendor trade secrets (as defined under applicable law), at all times such information remains a trade secret under applicable law, the TEL will regard and treat all such items or information as strictly confidential and wholly owned by Vendor and will not, for any reason or in any fashion, either directly or indirectly use, disclose, transfer, assign, disseminate, reproduce, copy, or otherwise communicate any such Vendor Confidential Information or Vendor trade secrets to any person for any purpose other than in accordance with this Agreement, pursuant to the written instructions from a duly authorized representative of Vendor or except to the extent reasonably necessary to fulfill the purposes of this Agreement or conduct the Lottery. In addition, to the extent the Act or any other applicable law imposes any greater restrictions or prohibitions with respect to any Vendor Confidential Information, Vendor trade secrets or other information or property of Vendor, the TEL covenants and agrees that it shall comply with such greater restrictions or prohibitions. The TEL shall use its best efforts to comply with the provisions of this Section 11(b). The TEL shall not be liable, however, to Vendor or to any other person, if despite the TEL’s best efforts, Vendor Confidential Information is disclosed in breach of the foregoing. Notwithstanding anything herein to the contrary, with respect to the Proposal only, the entirety of Section 1.5 of the RFP shall supersede and control any provision of this Agreement and the TEL’s obligations and liabilities shall never be greater than as set forth in Section 1.5 of the RFP.

(d) Vendor acknowledges that the TEL is subject to the Public Records Act. In view thereof, the parties agree that the TEL shall advise Vendor of any request for inspection of records under the Public Records Act that seeks Vendor Confidential Information prior to making a decision to disclose such information and provide Vendor with an opportunity to respond to such request. If the TEL determines that any such Vendor Confidential Information

should be disclosed, the TEL shall promptly so notify Vendor and shall not disclose the information until the latest date allowed for disclosure under the Public Records Act. Unless otherwise required by court order or direction, no disclosure shall be made while legal proceedings regarding the issue of disclosure are pending. Any disclosure may be made under such limiting conditions, as the TEL shall determine appropriate.

(e) In recognition of the need of the TEL to protect its legitimate business interests, Vendor hereby covenants and agrees that with regard to any: (i) TEL Confidential Information, at all times during the term of this Agreement and for a period of three (3) years following the expiration or termination of this Agreement for any reason; and (ii) TEL trade secrets (as defined under applicable law), at all times such information remains a trade secret under applicable law, Vendor and other members of the Vendor Team will regard and treat all such information as strictly confidential and wholly owned by the TEL and will not, for any reason or in any fashion, either directly or indirectly use, disclose, transfer, assign, disseminate, reproduce, copy, or otherwise communicate any such TEL Confidential Information or TEL trade secrets to any person for any purpose other than in accordance with this Agreement or pursuant to the written instructions from a duly authorized representative of the TEL. In addition, to the extent the Act or any other applicable law imposes any greater restrictions or prohibitions with respect to any TEL Confidential Information, TEL trade secrets or other information or property of the TEL, Vendor covenants and agrees that it and all members of the Vendor Team shall comply with such greater restrictions or prohibitions. Vendor shall use its best efforts to comply with, and to ensure that all other members of the Vendor Team comply with, the provisions of this Section 11 (d), including, without limitation, obtaining written confidentiality agreements with all other members of the Vendor Team which incorporate requirements no less restrictive than those set forth herein and which contain provisions which permit the TEL to independently enforce the requirements set forth in such agreements.

(f) All work product, property, data, documentation or information or materials conceived, discovered, developed or created by Vendor or any member of the Vendor Team pursuant to this Agreement exclusively and specifically for the TEL and solely for the TEL's use (collectively, the "Work Product") shall be owned exclusively by the TEL. Notwithstanding the foregoing, nothing contained herein shall limit or be deemed to limit any member of the Vendor Team's intellectual property ownership rights in its basic, unmodified proprietary software systems that are generally provided to its customers. To the greatest extent possible, any Work Product shall be deemed to be a "work made for hire" (as defined in the Copyright Act, 17 U.S.C.A. §§ 101 et seq., as amended) and owned exclusively by the TEL. Vendor hereby unconditionally and irrevocably transfers and assigns to the TEL, and Vendor shall cause all members of the Vendor Team and others it retains to irrevocably transfer and assign to the TEL, all right, title and interest in or to any Work Product, including, without limitation, all patents, copyrights, trade secrets, trademarks, service marks and other intellectual property rights therein. Vendor agrees to execute and deliver to the TEL, and to cause all members of the Vendor Team and others it retains to execute and deliver, any transfers, assignments, documents or other instruments which the TEL may deem necessary or appropriate, from time to time, to vest complete title and ownership of any Work Product, and all associated intellectual property and other rights, exclusively in the TEL. During the performance of the services and provisions of the goods specified herein, Vendor shall be responsible for any loss or damage to any Work Product while in the possession of Vendor or any member of the Vendor

Team, and any loss or damage thereto shall be restored at Vendor's expense. The TEL shall have full, immediate and unrestricted access to all Work Product during the term of this Agreement.

(g) The TEL hereby grants to Vendor a fully paid-up, non-exclusive, perpetual, irrevocable and transferable license to use, sublicense, modify and create derivative works of software, hardware, equipment, firmware and mask works which are owned by the TEL and created solely by Vendor or any member of the Vendor Team, and which constitute Work Product (the "Created Work Product Items"). While the TEL has the free rights to use, modify and create derivative works of such Created Work Product Items for its own use, it agrees not to license any of the rights licensed to Vendor to any other person unless Vendor: (i) ceases to function as a going concern; (ii) files bankruptcy; (iii) has filed against it, any bankruptcy or insolvency proceeding of any kind and such filing or proceeding is not withdrawn or dismissed within ninety (90) days; (iv) dissolves, liquidates or otherwise ceases its corporate existence; (v) makes an assignment for the benefit of its creditors; or (vi) Vendor announces it will cease, or actually ceases, to perform continuing maintenance, support or enhancement services with regard to Created Work Product Items (any of the foregoing events being defined as "Material Event"). Upon the occurrence of any Material Event, the license granted by this Section 11 (e) to Vendor with respect to the Created Work Product Items, and any restrictions of the TEL's rights with respect to such Created Work Product Items set forth in this Section 11 (e) shall immediately terminate and cease, and the TEL shall have the right, without limitation, to grant to another person a license to use, modify and create derivative works of Created Work Product Items for the use or benefit of the TEL.

(h) Vendor hereby grants to the TEL a fully paid-up, non-exclusive, non-transferable license for the term of this Agreement to use all software which is provided by Vendor or Subcontractors for the use by or benefit of the TEL pursuant to this Agreement, whether such software is currently set forth in the Proposal or subsequently provided (collectively, the "Vendor Software"). Upon the occurrence of a Material Event, in addition to any rights or licenses which the TEL may acquire pursuant to any source code escrow agreement required by the RFP or otherwise entered into for the benefit of the TEL, the TEL's license to the Vendor Software shall automatically be expanded to include the license and right for the TEL, or others on behalf of the TEL, to use, modify and create derivative works of the Vendor Software solely and exclusively for the TEL's use or benefit.

12. COMMITMENT TO NONDISCRIMINATION

(a) Each member of the Vendor Team hereby covenants and agrees that no person shall (A) be excluded from participation in, or be denied benefits of, this Agreement, or (B) be excluded from employment, denied any of the benefits of employment or otherwise be subjected to discrimination on the grounds of handicap or disability, age, race, color, religion, sex, national origin or ancestry, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Vendor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination. Breach of this covenant may be regarded as a material breach of this Agreement. Each member of the Vendor Team shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, handicap, disability, national origin or ancestry.

(b) Consistent with the Act, Vendor agrees to make every reasonable effort to include the participation by minority businesses in the performance of its services pursuant hereto. Specifically, and without limitation, any human resources services performed for the TEL will include appropriate attention to the hiring and training of qualified minority applicants in accordance with the Act and all written policies and procedures adopted by the TEL from time to time.

(c) Consistent with the Act, and in accordance with Section 4.14 of the RFP, Commitment to Nondiscrimination, Vendor has submitted the response to such Section, along with EBO form B, copies of which are attached hereto as Exhibit A and incorporated herein by reference.

13. LIMITATION OF LIABILITY

THE PAYMENT OBLIGATIONS UNDERTAKEN BY THE TEL UNDER THIS AGREEMENT ARE SUBJECT TO THE AVAILABILITY OF FUNDS TO THE TEL. THERE SHALL BE NO LIABILITY ON THE PART OF THE TEL EXCEPT TO THE EXTENT OF AVAILABLE FUNDS PERMITTED TO BE PAID FROM THE PROCEEDS OF LOTTERY OPERATIONS AND OTHER FUNDS AVAILABLE TO THE TEL. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, UNDER NO CIRCUMSTANCES WILL THE STATE OF TENNESSEE, ITS GENERAL FUND OR ANY OF ITS AGENCIES OR POLITICAL SUBDIVISIONS BE RESPONSIBLE OR LIABLE AS A RESULT OF THIS AGREEMENT OR ANY LIABILITY CREATED HEREBY OR ARISING HEREUNDER.

14. ANTITRUST ACTIONS

Vendor hereby conveys, sells, assigns and transfers to the TEL all of its right, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States of America and the State of Tennessee relating to any systems, equipment and services acquired by the TEL under this Agreement.

15. COMPLIANCE WITH LAWS

Vendor agrees to comply with all applicable written rules, procedures and regulations adopted from time to time by the TEL under the Act and all other applicable federal, state and local laws, rules, regulations, ordinances or executive orders, including, without limitation, the Americans with Disabilities Act of 1990 (42 U.S.C §§ 1201 et. seq.) and all other labor, employment and anti-discrimination laws, and all provisions required thereby to be included herein, are hereby incorporated by reference (all of the foregoing being sometimes referred to collectively as the “Governing Laws and Regulations”).

16. REPRESENTATIONS, WARRANTIES AND ADDITIONAL COVENANTS

Vendor hereby represents, warrants or covenants, as the case may be, to the TEL, on its own behalf and on behalf of each member of the Vendor Team, as follows:

(a) Vendor and each member of the Vendor Team are and will remain at all times during the term of this Agreement duly organized and in good standing under the laws of the respective jurisdiction under which they are organized. Vendor has the power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement, and Vendor has taken all necessary and appropriate action to authorize the execution and delivery of this Agreement and the performance of its obligations under this Agreement. The execution and delivery of this Agreement and the performance of its obligations under this Agreement are not in contravention of any provisions of law or any material indenture or agreement by which Vendor is bound and do not require the consent or approval of any governmental body, agency, authority, lending institution, bond holder or other person which has not been obtained. This Agreement constitutes the valid and legally binding obligation of Vendor, enforceable against Vendor in accordance with its terms.

(b) Vendor and each other member of the Vendor Team have disclosed or will disclose to the TEL all matters required to be disclosed under the Governing Laws and Regulations. In addition, Vendor and each member of the Vendor Team recognize and acknowledge that there are certain limitations on their activities, and the activities of their Subcontractors, now and in the future, including, but not limited to, limitations on certain political contributions, limitations on the ability to enter into or perform contracts or other arrangements with certain third parties, and limitations on the ability to purchase lottery tickets, all of which shall be honored. Some of these restrictions also apply to the employees of each member of the Vendor Team and the members of such employees' households, and each member of the Vendor Team will enforce such restrictions upon its employees and Subcontractors.

(c) Neither Vendor, the Subcontractors nor any of its or their respective officers, directors, partners or major shareholders has ever been found guilty of a felony related to the security or integrity of any lottery in any jurisdiction. For purposes of this Agreement, a major shareholder of a corporation shall be a shareholder owning at least one percent (1%) of the issued and outstanding stock of such corporation.

(d) Neither Vendor, the Subcontractors nor any of its or their respective officers, directors, partners or major shareholders has an ownership interest in any person that has supplied consultation services under contract to the TEL with respect to the RFP.

(e) No "public official" (as defined in Tenn. Code Ann. §8-50-501(a)) has an ownership interest of one percent (1%) or more in Vendor or any of the Subcontractors.

(f) To the extent required by applicable law, Vendor and each member of the Vendor Team are, and will remain at all times during the term of this Agreement, qualified to do business in the State of Tennessee and will file Tennessee income tax returns.

(g) All Work Product: (i) shall be prepared, worked on and completed solely by employees of Vendor or a member of the Vendor Team in the scope of their employment or by independent contractors of Vendor or a member of the Vendor Team working under the strict and direct supervision of such employees; (ii) shall be original works of authorship; (iii) shall not infringe, plagiarize, pirate or constitute misappropriations of any copyrights, trademarks, service

marks, trade names, confidential information, trade secrets or other intellectual properties or proprietary rights of any person; and (iv) shall not be false, misleading, actionable, defamatory, libelous or constitute an invasion of privacy of any person.

(h) Except as may be required by Securities Exchange Act of 1934 and the regulations promulgated thereunder, neither Vendor nor any other members of the Vendor Team, nor any of its or their respective employees, officers, directors, partners or major shareholders, shall issue any press release, conduct any press or news conference, participate in any media interview or otherwise make any public statement or announcement on behalf of, with respect to or in connection with this Agreement, or the TEL without the prior written consent of the CEO or her designee(s) in each instance.

(i) Neither Vendor nor any other members of the Vendor Team, nor any of its or their respective employees, officers, directors, partners or major shareholders, shall use the TEL's name, logos, images or any other information or data related to the services to be provided pursuant to this Agreement as a part of or in connection with any commercial advertising without the prior written consent of the CEO or her designee(s) in each instance.

(j) All products and services provided by the Vendor Team used in connection with this Agreement shall in all respects meet the requirements, performance standards and specifications of the RFP, the Questions and Answers, the Proposal and this Agreement, and design of and software used in connection with Vendor's and all Subcontractors' computer systems shall be suitable and fit for the purposes of an online player-selection lottery and retailer activated bar code reader data collection system.

(k) All computer equipment, terminals, monitors, peripherals and personal computers provided by the Vendor Team shall be new and shall conform to the manufacturer's current official published specifications. All such equipment and components not manufactured by the Vendor Team (including the communications network) shall carry manufacturer warranties of merchantability and warranties against defects in materials and workmanship. All adjustments, repairs and replacement parts necessary to maintain such equipment and components in good working order shall be promptly provided and performed by Vendor. Any such equipment not meeting the requirements set forth herein shall be replaced by Vendor as soon as feasible and without cost to the TEL.

(l) Vendor and the other members of the Vendor Team shall keep all of their hardware and equipment used in connection with the Lottery in good condition and repair and shall make all reasonable efforts to prevent anything that may materially impair the operations thereof. Such hardware and equipment shall not be used in violation of this Agreement, the RFP, the Questions and Answers or any federal or state law, and neither Vendor nor other members of the Vendor Team shall pledge, grant a security interest or lien on, hypothecate or otherwise encumber such hardware or equipment or otherwise dedicate the use of such hardware or equipment in such a way as to compromise the ability of the TEL to use same for the proper functioning of the Lottery or the ability of any member of the Vendor Team to perform its obligations under this Agreement.

(m) All systems analysis, systems design and programming prepared or done by Vendor or any other member of the Vendor Team in connection with this Agreement, the RFP or the Proposal have been and shall be prepared or done in a workmanlike manner consistent with the highest professional and technical guidelines and standards of the industry in which Vendor is engaged.

(n) All computer programs and equipment implemented by Vendor or any member of the Vendor Team for performance under this Agreement shall meet their stated performance standards and shall correctly and accurately perform their intended functions in all material respects on all hardware and other equipment supplied by the TEL, Vendor or any Subcontractor.

(o) All Lottery games provided by the Vendor Team pursuant to this Agreement shall in all respects conform to, and function in accordance with, their specifications and designs, as approved by the TEL. Without limiting the generality of the foregoing, Vendor's computer system: (i) shall issue Lottery tickets only from authorized terminals; (ii) shall only authorize payment on legitimate winning tickets; and (iii) if the game design so provides, shall limit purchases on any given number or numbers.

17. OBLIGATIONS OF VENDOR

(a) Vendor shall provide to the TEL on an annual basis updated certificates of existence showing that Vendor and each member of the Vendor Team are qualified to transact business in the State of Tennessee.

(b) Vendor agrees to fully disclose to the TEL all matters materially affecting the TEL, this Agreement or the performance of this Agreement and all matters reasonably necessary to perform background and security investigations with respect to Vendor, the Subcontractors, their respective officers, directors, partners, major shareholders and employees, and the employees performing services pursuant to this Agreement or otherwise for the benefit of the TEL. In addition, Vendor acknowledges that some or all of its employees, officers, directors, partners and major shareholders, and its Subcontractors and their respective employees, officers, directors, partners and major shareholders, may be required to submit to background and other investigations, and Vendor shall cause any such employees or Subcontractors to fully cooperate with any such investigations and to provide all necessary information and authorizations in connection therewith. Vendor further agrees that it will routinely and continuously update all information disclosed to the TEL pursuant to this Agreement or the RFP, including, without limitation, any breaches of all representations, warranties and additional covenants set forth in Section 16 of this Agreement, no less often than every six (6) months; provided, however, Vendor shall as soon as possible notify the TEL upon the occurrence of any event the effect or result of which Vendor would be required to disclose, or to update a previous disclosure, to the TEL under this Agreement or the RFP and which event materially affects the TEL, the Vendor Team, any of their respective officers, directors, partners, major shareholders or employees, this Agreement or the performance of this Agreement. Vendor further agrees to notify the TEL: (i) as soon as possible, but no more than five (5) days of Vendor's first learning of the filing of any criminal proceeding or issuance of any indictment involving any member of the Vendor Team; and (ii) immediately of Vendor's first learning of any material civil or administrative proceeding

involving the Vendor and within twenty (20) days of the Vendor's first learning of any material civil or administrative proceeding involving any other member of the Vendor Team.

(c) Vendor must, contemporaneously with the execution of this Agreement, post and maintain at least throughout the term of this Agreement a performance bond (the "Bond") or letter of credit for the benefit of the TEL in an amount equal to Ten Million Dollars (\$10,000,000), unless such bond or letter of credit is replaced by alternate security as authorized by the Act. The security provided by Vendor pursuant to this Section 17(c) shall provide funds to the TEL in the event the TEL suffers any liability, loss, damage or expense as a result of Vendor's failure to fully and completely perform any or all of the requirements contained in this Agreement, including, without limitation, Vendor's obligation to pay any liquidated damages due hereunder or to indemnify the TEL pursuant hereto. The Bond may be renewable annually, provided that: (i) it provides that, in the event the Bond will not be renewed for an additional year, the TEL will be provided written notice thereof at least thirty (30) days prior to the expiration thereof; and (ii) if any such Bond is not renewed for an additional year, Vendor must obtain a replacement Bond or letter of credit or alternate security as authorized by the Act to be in place so that at no time is Vendor in violation of its obligation pursuant to this Section 17(c) to maintain a performance bond at least throughout the term of this Agreement. Notwithstanding anything to the contrary contained herein, neither non-renewal by the issuer of the Bond, nor the failure or inability of Vendor to renew the Bond for a subsequent year shall constitute a loss to the TEL recoverable under the Bond.

(d) Vendor shall maintain the following types and amounts of insurance during the term of this Agreement:

- (i) General liability insurance in the amount of Five Million Dollars (\$5,000,000);
- (ii) Property insurance in the amount of replacement cost;
- (iii) Errors and omissions insurance in the amount of Fifteen Million Dollars (\$15,000,000);
- (iv) Automobile liability insurance in the amount of Five Million Dollars (\$5,000,000);
- (v) Self insurance with respect to equipment in the field; and
- (vi) Such other types and amounts of insurance that are reasonably required and are mutually agreed upon by the TEL and Vendor in writing.

(e) Vendor shall provide the TEL with certificates of insurance within ten (10) days after the Effective Date and evidence of any renewed bonds or insurance policies within five (5) days prior to the expiration of the then existing bonds or insurance policies. All bonds and insurance required of Vendor by this Agreement must be issued by companies or financial institutions which are financially rated A or better by a nationally recognized rating agency and duly licensed, admitted and authorized to transact business in the State of Tennessee.

(f) Vendor agrees to escrow the source codes to all applicable software and other similar proprietary materials developed or provided by Vendor or any member of the Vendor Team in connection with its or their performance under this Agreement, in accordance with a standard source code escrow agreement in form and substance acceptable to the TEL, in its sole but reasonable discretion. Said source code escrow agreement will be updated within thirty (30) days of each software change.

(g) Vendor shall, at its own expense, conduct trademark and service mark searches with respect to the names of all online games provided by the Vendor Team for use in connection with the Lottery. New trademarks and service marks developed solely for the TEL will be registered in the name of the TEL for its sole use.

(h) Vendor shall lease office space from the TEL at the TEL's main office, under the same terms and conditions as required by the TEL from its landlord—USAA Realty Company—or its successors and assigns. Vendor shall allow any authorized representatives of the TEL to inspect, without notice and at reasonable times, the plants, places of business and job sites of Vendor or any member of the Vendor Team that are being used in connection with the performance of this Agreement. Vendor shall not change the location of its computer system, offices or service facilities used in connection with this Agreement without the prior written approval of the TEL, which such approval shall not be unreasonably withheld.

(i) Vendor shall establish and maintain a physical and software security program that is acceptable to the TEL and shall adhere to all written security requirements established from time to time by the TEL.

(j) Vendor and each other member of the Vendor Team shall establish and enforce a code of conduct for their respective employees, vendors, suppliers and independent contractors to ensure that Vendor and each other member of the Vendor Team comply with the written rules and procedures established by the TEL.

(k) Vendor and each other member of the Vendor Team will promptly disclose all written and oral agreements any of them have with any lobbyists or consultants working on their behalf in the State of Tennessee or before the United States government, and, upon the written request of the TEL, they will immediately provide copies of all such written agreements and summaries of such oral agreements to the TEL. Notwithstanding anything else contained herein to the contrary, the TEL may terminate this Agreement immediately upon written notice to Vendor in the event Vendor or any other member of the Vendor Team fails to comply with the provisions of this Section 17(k).

(l) Vendor has agreed to provide an Equal Business Opportunity ("EBO") Program, which will include minority subcontracting opportunities and business development as outlined in Exhibit A, along with a grant to fund a job training internship program. Vendor's unconditional grant in the amount of Five Hundred Twenty-five Thousand Dollars (\$525,000.00) (the "Grant") shall be provided pursuant to a schedule mutually acceptable to Vendor and the TEL over the term of this Agreement, to form, via a contribution of the entire Grant, an educational joint venture with Tennessee's historically black colleges and universities. The Grant shall be utilized to create a job training internship program enabling students to enhance their

skills in one of the following disciplines: technology, marketing, advertising, legal, security, accounting, communication, finance and government relations. While this educational joint venture will generate income for the participants, the ultimate goal is to provide significant on-the-job training leading to the development of skills useful in obtaining permanent employment with Vendor, the TEL or other corporations both within and outside the lottery industry. Vendor's EBO Program shall generate a minority business participation level of at least twenty percent (20%) of its revenues received from the TEL. Vendor will submit on a monthly basis, and in connection with its final payment request, EBO Form "D", included as Attachment G to the RFP, certifying all payments made to Minority-Owned Businesses. In addition, Vendor will provide the TEL with quarterly reports detailing its activities in compliance with its total EBO efforts. Vendor's EBO Program will be reviewed after June 30, 2004 and annually thereafter. It is the intent of the parties that every effort be made to locate and build the capacity of Tennessee based minority owned businesses. Where those capacities can be demonstrated and acceptable pricing can be arranged Vendor will use such minority owned businesses to fulfill its commitment under this Agreement. Failure to comply with the terms of this Section 17(l) may be deemed a breach, which shall give rise to the TEL's termination rights pursuant to Section 19 of this Agreement.

(m) Vendor will provide, at no extra cost to the TEL, the following items in addition to the items proposed in Section 5 of the Proposal:

- (i) ten (10) hand-held terminals for use at special events (parties to agree on a reasonable connectivity plan for the same);
- (ii) Lottery Retailer Manuals, to be updated as needed;
- (iv) *Next Vision* multimedia display subsystem, the monitor game *Hot Trax* and the TEL shall have the option to select any other monitor games currently owned or subsequently owned and/or developed by Vendor; and
- (v) Pencils for retail locations, in addition to the retractable pens.

(n) Vendor shall provide a network performance guarantee for wireless network availability. Vendor will pay the TEL One Hundred Thousand Dollars (\$100,000) for every.1% of the time that the wireless network availability drops below 99.8% in any given calendar year.

(o) Commencing on the Online Start-Up Date, Vendor will provide to the TEL a marketing allowance of Ten Thousand Dollars (\$10,000) per month during the term of the Agreement.

(p) Vendor will add, modify and provide traditional online lottery games to the TEL for testing within ninety (90) days of mutually agreed upon specifications or as otherwise mutually agreed in writing. Vendor will provide enhancements to the Instant Ticket System and the Lottery's back-office management system to the TEL for testing within ninety (90) days of mutually agreed upon specifications or as otherwise agreed in writing.

18. TAXES

The TEL will not be responsible for any taxes levied on Vendor or any member of the Vendor Team as a result of the execution, delivery or performance of this Agreement. Vendor and Subcontractors shall pay and discharge any and all such taxes in a timely manner.

19. TERMINATION

(a) Notwithstanding anything herein to the contrary, the TEL may cancel and terminate this Agreement: (i) if Vendor fails to correct or cure any breach of any of Sections 7(b), 16(c), 16(d), 16(e), 16(h), 17(b), 17(c), 17(h), 17(i),) or 17(l) of this Agreement (the “Major Sections”) within seventy-two (72) hours of the earlier of: (A) Vendor’s having knowledge of such breach; or (B) Vendor’s receiving written notice of such breach from the TEL or such longer cure period as the parties may agree is reasonable under the circumstances; or (ii) if Vendor fails to correct or cure any breach of any other provisions or Sections of this Agreement, other than Major Sections, after thirty (30) days prior written notice from the TEL or if such breach is of a type that cannot reasonably be cured within thirty (30) days and Vendor is diligently attempting to cure such breach, then such breach shall continue for ninety (90) days after prior written notice from the TEL;

(b) If the TEL, after thirty (30) days prior written notice from Vendor, fails to correct or cure any material breach of this Agreement, then Vendor may cancel and terminate this Agreement and in due course collect monies properly due up to and including the date of such termination.

(c) In the event that either party hereto is unable to perform any of its obligations under this Agreement, or to enjoy any of its benefits because of natural disaster, an act of God, war, terrorism, civil disturbance, riot, strike, action or decree of governmental bodies or other events of force majeure not the fault of the affected party, the affected party shall immediately give notice to the other party and shall use its best efforts to resume performance. Upon receipt of such notice, each party’s obligations under this Agreement shall be immediately suspended. Any such causes of delay or failure shall, in the exercise of reasonable diligence, extend the period of performance, for a reasonable period, until after such causes of delay or failure have been removed.

(d) If, for any reason other than a breach of this Agreement by the TEL, the Vendor Team is unable to perform its obligations hereunder, the TEL shall acquire a usufruct in all property owned by any member of the Vendor Team which is used in conjunction with, and is necessary to, the performance of this Agreement, which usufruct shall exist until the expiration or termination of this Agreement.

20. LIQUIDATED DAMAGES

(a) Definitions

- (i) Average Daily Sales - shall be defined as the annual online sales for the past fiscal year divided by 365.
- (ii) Average Number of Terminals – shall be defined as the average number of terminals selling tickets per day during the previous fiscal year.
- (iii) Net Revenue – shall be defined as the Average Daily Sales multiplied by 35%.
- (iv) Business Minute - shall be defined as a minute that lottery tickets are available for sale.
- (v) Business Minutes per Day – shall be defined as the number of hours that lottery sales are available per day multiplied by 60.
- (vi) Net Revenue per Business Minute - shall be defined as the Net Revenue divided by Business Minutes per Day.
- (vii) Net Revenue per Business Minute per Terminal – shall be defined as the Net Revenue per Business Minute divided by the Average Number of Terminals.
- (viii) Initial averages and values – Parties agree to using the proposed sales estimates and initial terminal base for performing calculations until such time that an efficient amount of actual sales data is available. Vendor and the TEL may mutually agree to modify these figures as needed.

Average Daily Sales – Estimated 1.1 billion divided by 365.

Average Number of Terminals – 4000 [or actual terminals installed at start-up].

Business Minutes per Day – 20 hours [1200 minutes].

(b) If any of the below-described events occurs, the TEL shall have the right to assess Vendor for liquidated damages subject to the maximum liquidated damage amounts set forth below corresponding to each such event.

- (i) Delay in the Start of the Lottery. In the event that Vendor is responsible for the delay in the start of the Lottery, based on the mutually agreed upon date and time, for failure to successfully design, develop, test, install, download or deploy the appropriate software and supporting equipment, the TEL may assess liquidated damages of up to \$100,000 per day until such start-up occurs.

- (ii) Delay in System Operations. In the event that Vendor is responsible for the delay in the start of Online System Operations on the mutually agreed upon start date and time for failure to successfully design, develop, test, install, download or deploy the appropriate software and supporting equipment, the TEL may assess liquidated damages of up to \$100,000 per day until such System Operation occurs.
- (iii) Delay in Start of New Game. Vendor may be assessed damages of up to \$50,000 per day if a delay in the start of a new game is caused by Vendor's failure to successfully design, develop, test, install, download or verify the software required to begin such new game in accordance with a mutually agreed upon start date.
- (iv) System Downtime. In the event that Vendor's central computer system experiences downtime of more than ten (10) minutes in the aggregate in any sales day, TEL may assess Vendor with liquidated damages for each minute of downtime thereafter calculated as the product of (x) the number of down Business Minutes in excess of ten (10) down minutes and (y) the Net Revenue per Business Minute.

Vendor and the TEL shall determine, on an annual basis at the beginning of each fiscal year or more frequent interval, the previous fiscal year's average sales and business minutes to be used for the next fiscal year, as well as whether any of the assumptions used to determine liquidated damages in this section should be modified. For start-up, the sales per business minute will be calculated using estimated annual sales and actual terminal population.

- (v) Terminal Downtime. Vendor may be assessed liquidated damages for lost net revenue for each minute a terminal remains unable to sell or validate tickets after a grace period equal to the "Response Times" set forth in Section 6.2.5, Equipment Maintenance And Supplies, of the RFP. Those response times are two (2) hours in metropolitan areas and four (4) hours in non-metropolitan areas. For the purpose of assessing liquidated damages for terminal downtime, a terminal that is installed in a conforming location compliant with all dedicated circuitry for the terminal and supporting communications equipment, is deemed to be down from the time Vendor is notified of the terminal inability to sell or validate tickets. Damages are calculated as the product of (x) the number of down minutes per terminal in excess of the grace period and (y) the Net Revenue per Business Minute per Terminal.

- (vi) Delayed Monitor Repair. Vendor may be assessed \$50 per day for delayed monitor repair after a 48-hour grace period from the time Vendor receives notice of a monitor failure, if Vendor has not repaired or replaced the monitor.
- (vii) Insufficient Vendor Resources. Vendor and the TEL shall mutually agree as to a set of criteria for hot line staffing based on busy signals, time on hold and abandoned calls. The parties shall also agree on the staffing levels necessary for terminal and communication system installation and maintenance. TEL shall notify Vendor of its failure to meet such staffing criteria. In the event of such a failure, Vendor will have fourteen (14) calendar days to cure the failure from the time it is notified by the TEL. The TEL may assess liquidated damages in the amount of \$200 per day after that time.
- (viii) Failure to Provide Game Enhancements. Traditional online lottery games will be added or modified and provided to the TEL for testing within ninety (90) days of mutually agreed upon specifications. If Vendor fails to provide traditional online lottery games in accordance with the foregoing sentence, Vendor may be assessed liquidated damages in an amount of up to \$5,000 per day.
- (ix) Shortage of Online Ticket Stock. Should Vendor not supply sufficient quantities of online ticket stock to retailers resulting in a reduction of sales for said retailers, and which causes TEL personnel to deliver emergency ticket stock to said retailers, not including negligence or damage to ticket stock by the retailer, Vendor may be assessed liquidated damages in the amount of \$100 per incident.
- (x) Security Violations. Vendor and TEL shall mutually agree upon a list of classified individuals authorized access to the primary data center control room. In the event of unauthorized access, Vendor may be assessed liquidated damages in an amount up to \$1,000 per occurrence.
- (xi) Failure to Deliver Log Files. Prior to each drawing, Vendor shall make available to the TEL the draw close log tapes or files. If Vendor fails to do so, Vendor may be assessed liquidated damages in an amount up to \$25,000 per incident. At the end of each online day's processing, Vendor shall make available to the TEL the current day's transaction log tapes or files. If Vendor fails to do so, Vendor may be assessed liquidated damages in an amount of up to \$10,000 per incident.

- (xii) Untimely Software Additions or Modifications. If Vendor fails to install, download or implement any software modification or new addition pursuant to a mutually agreed upon schedule and scope, Vendor shall be assessed up to \$5,000 per day in liquidated damages.
- (xiii) Untimely Reports. Vendor and TEL will mutually agree as to the type and format of reports to be provided and time for delivery of such reports to the TEL. If Vendor fails to deliver such reports to the TEL by the agreed upon time, Vendor may be assessed liquidated damages in an amount up to \$100 per day.
- (xiv) Unauthorized Software Additions or Modifications. Vendor shall not make any additions or modifications to the system software without the approval of TEL. If Vendor breaches the foregoing sentence, Vendor may be assessed liquidated damages in the amount of \$100,000. In addition, if system software is not restored to its original condition within 24 hours of Vendor learning of the unauthorized change, Vendor will be assessed liquidated damages in the amount of up to \$5,000 per day for each day after such 24 hour period until the system software is restored to its original condition.
- (xv) Claimed Prize Tickets Not Approved by the TEL. Should Vendor's online gaming system produce and validate a ticket not determined to be a valid winning game ticket by the TEL according to its game rules and prize claiming procedures, Vendor may be held liable for the amount of said ticket.
- (xvi) Defective or Non-Conforming Tickets. Should Vendors online gaming system produce defective or non-conforming tickets due to a terminal equipment or printer malfunction or failure, which causes loss of revenue or the inability to pay appropriate prizes, Vendor may be assessed liquidated damages in an amount of up to \$10,000 per incident.
- (xvii) Unavailability of the Telemarketing and Inventory Control System. In the event that the computer system malfunctions or otherwise is unable to accept orders or assign packs during normal business hours of operations as specified by the TEL, the Vendor will make every effort to correct the malfunction in the shortest period of time possible. Should the malfunction result in the inability to pack and ship all current day orders, the Vendor may be assessed liquidated damages up to \$15,000 per day.
- (xviii) Incomplete or Incorrect Game Validation Files. In the event Vendor creates an incomplete or invalid game validation file on the

system after having received valid and complete game validation files from the instant ticket vendor, Vendor may be assessed liquidated damages in the amount of \$5,000 per occurrence.

- (xix) Failure to Fulfill the Minority Participation Commitment. The TEL will monitor and review Vendor's progress monthly through Vendor's submission of EBO Form "D". Annually, beginning September 1, 2004 the TEL will evaluate Vendor's annual EBO expenditures. In the event Vendor fails to provide a minority participation level of twenty percent (20%), Vendor shall be assessed liquidated damages in the amount of \$100,000 for every percentage point by which it fails to meet said commitment. Said funds shall be utilized to further expand the TEL's EBO Program, including the college internship program, as set forth in Section 17(l) of this Agreement.

(c) Vendor and the TEL hereby acknowledge and agree that:

- (i) the TEL's damages following the occurrence of any event set forth in Section 20(b) of this Agreement are difficult or impossible to accurately estimate or calculate;
- (ii) the liquidated damages amounts set forth in Section 20(b) of this Agreement are reasonable estimates of what the TEL's damages would be in the event of the occurrence of any such events and shall be the TEL's sole remedy with respect to the occurrence of such events;
- (iii) it is their mutual intention that Section 20(b) of this Agreement provide for liquidated damages to compensate the TEL upon the occurrence of such an event, rather than penalties to deter Vendor from breaching this Agreement and/or to punish Vendor upon the occurrence of such an event;
- (iv) to the extent an event occurs for which liquidated damages are assessable under more than one subsection of Section 20(b) of this Agreement, the TEL and the Vendor shall mutually agree upon the more appropriate subsection;
- (v) the TEL shall have the right, in its sole discretion, to waive (in whole or in part) payment by Vendor of liquidated damages due hereunder but must assess liquidated damages within six (6) months of learning of the incident or waive them. A waiver in any one instance shall be strictly limited to that specific instance and shall not in any way constitute or be construed to be a waiver of the payment of any other liquidated damages that are due or may become due hereunder; and

- (vi) the TEL shall notify Vendor in writing of a proposed assessment of liquidated damages forty-five (45) days before each such assessment shall become due and payable. Upon written notification Vendor shall have ten (10) days to dispute said charges.

21. INDEMNIFICATION

(a) Vendor agrees to indemnify, defend and hold harmless the TEL, its directors and officers, the State of Tennessee and its agencies and political subdivisions, and their respective agents, officers and employees, against any and all suits, damages, expenses (including, without limitation, court costs, reasonable attorneys' fees and other damages), losses, liabilities and claims of any kind, caused by or resulting from any breach of this Agreement by any member of the Vendor Team or any other act or omission of any member of the Vendor Team or any of its or their respective agents or employees, whether the same may be the result of negligence, responsibility under strict liability standards, any other substandard conduct or otherwise.

(b) In addition, Vendor agrees to indemnify, defend and hold harmless the TEL, its directors and officers, the State of Tennessee and its agencies and political subdivisions, and their respective agents, officers and employees, against any and all suits, damages, expenses (including, without limitation, court costs, attorneys' fees and other damages), losses, liabilities and claims of any kind, arising out of, in connection with or resulting from the development, possession, license, modifications or use of any copyrighted or non-copyrighted composition, trademark, service mark, service process, patented invention or idea, trade secret, article or appliance furnished to the TEL, or used in the performance of this Agreement, by any member of the Vendor Team.

22. DISPUTE RESOLUTION PROCEDURES

Any and all claims, disputes or controversies arising in connection with this Agreement must be made in accordance with the Dispute Resolution Procedures established by the Board (as the same may be amended from time to time).

23. NOTICES

(a) All notices and statements provided for or required by this Agreement shall be in writing, and shall be delivered personally to the other designated party, or mailed by certified or registered mail, return receipt requested, or delivered by a recognized national overnight courier service, as follows:

If to the TEL:	Tennessee Education Lottery Corporation Plaza Tower MetroCenter 200 Athens Way Nashville, Tennessee 37228 Attn: Rebecca G. Paul, Chief Executive Officer
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If to Vendor: GTECH Corporation
55 Technology Way
West Greenwich, Rhode Island 02817
Attn: General Counsel

(b) Either party hereto may change the address and/or person to which notice is to be sent by written notice to the other party in accordance with the provisions of this Section 23.

24. MISCELLANEOUS

(a) This Agreement, together with the Proposals, the Questions and Answers and the RFP, all of which are incorporated herein by this reference, contains the entire agreement and understanding concerning the subject matter hereof between the parties hereto. No waiver, termination or discharge of this Agreement, or any of the terms or provisions hereof, shall be binding upon either party hereto unless confirmed in writing. This Agreement may not be modified or amended, except by a writing executed by both parties hereto. No waiver by either party hereto of any term or provision of this Agreement or of any default hereunder shall affect such party's rights thereafter to enforce such term or provision or to exercise any right or remedy in the event of any other default, whether or not similar.

(b) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TENNESSEE, AND ANY CAUSE OF ACTION ARISING HEREUNDER MUST BE BROUGHT IN A STATE OR FEDERAL COURT LOCATED IN DAVIDSON COUNTY, TENNESSEE. VENDOR HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY PROCEEDING WHICH IS BROUGHT IN SUCH A COURT.

(c) Neither party hereto shall assign this Agreement, in whole or in part, without the prior written consent of the other party hereto, which such consent shall not be unreasonably withheld, and any attempted assignment not in accordance herewith shall be null and void and of no force or effect; provided, however, nothing herein shall prevent the TEL from freely assigning this Agreement, without requiring Vendor's prior written consent, to any person which operates or will operate the Lottery. For purposes of this Section 24(c), any sale or transfer of a controlling equity interest in, or substantially all of the assets of, Vendor will be deemed an assignment for which the TEL's consent is required.

(d) This Agreement shall be binding on and inure to the benefit of the TEL and its successors and permitted assigns and Vendor and its successors and permitted assigns.

(e) The headings contained herein are for the convenience of the parties only and shall not be interpreted to limit or affect in any way the meaning of the language contained in this Agreement.

(f) This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same Agreement. Any signature page of any such counterpart, or any electronic facsimile thereof, may

be attached or appended to any other counterpart to complete a fully executed counterpart of this Agreement, and any telecopy or other facsimile transmission of any signature shall be deemed an original and shall bind such party.

(g) If any provision of this Agreement shall be held void, voidable, invalid or inoperative, no other provision of this Agreement shall be affected as a result thereof, and accordingly, the remaining provisions of this Agreement shall remain in full force and effect as though such void, voidable, invalid or inoperative provision had not been contained herein.

(h) Upon the request of either party, the TEL and Vendor agrees to take, and to cause any other member of the Vendor Team to take, any and all actions, including, without limitation, the execution of certificates, documents or instruments, necessary or appropriate to give effect to the terms and conditions set forth in this Agreement.

25. ADDITIONAL SERVICES

In the event the TEL desires to retain the services of Vendor for activities in addition to those contemplated by this Agreement and the RFP, and Vendor agrees to perform such services, payment for such services shall not exceed the rates identified in this Agreement unless agreed to in writing by the TEL. Any such services, the rates and the terms of payment shall be approved, in writing, prior to the commencement of any such additional work. In no event shall Vendor or any member of the Vendor Team be paid for work not authorized, or for work in excess of that authorized, in writing by the TEL.

26. COOPERATION OF THE PARTIES

Vendor and the TEL agree to cooperate fully, to work in good faith and mutually to assist each other in the performance of this Agreement. In this regard, the parties will meet to resolve problems arising under this Agreement. Neither party will unreasonably withhold its approval of any act or determination of the other to which its approval is necessary or desirable.

27. REQUIRED INVESTIGATIONS

The TEL and Vendor hereby agree that this Agreement, and all of the terms and conditions contained herein, is subject to the completion of all criminal and other background investigations required by the Act or the TEL Policies. This Agreement will not be binding upon the TEL or the Vendor until the completion of all such investigations.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement to be effective as of the Effective Date.

TEL:

TENNESSEE EDUCATION LOTTERY
CORPORATION

By _____

Print Name _____

Title: _____

Vendor:

GTECH CORPORATION

By: _____

Print Name: _____

Title: _____

EXHIBIT A

[Commitment to Nondiscrimination]

**TENNESSEE EDUCATION LOTTERY CORPORATION
EQUAL BUSINESS OPPORTUNITY PROGRAM**

EBO FORM B

**MINORITY-OWNED BUSINESS UTILIZATION PLAN
(TO BE SUBMITTED WITH THE BID/PROPOSAL)**

Company: **GTECH Corporation**
RFP: **Lottery Gaming Systems and Services**

GTECH Corporation certifies that on the following procurement opportunity, the Tennessee Education Lottery Corporation Lottery Gaming Systems and Services Agreement, the following minority-owned businesses will be utilized as subcontractors, vendors, suppliers, or provide professional services:

Name	Description of Work	Contract Value	Joint Venture (Yes/No)	% of Minority Ownership	Certified (Yes/No)	Certification Agency
ASHAUN	CALL CENTER	\$439,000	NO	100%	YES	MIDSOUTH MINORITY BUSINESS COUNCIL
BLACK BOX	COMMUNICATIONS HARDWARE	\$2,500	NO	100%	PENDING	TN MINORITY SUPPLIER DEVELOPMENT COUNCIL
OLYMPIC STAFFING	STAFF RECRUITMENT	\$20,000	NO	100%	YES	SHELBY COUNTY
RITELL COMMUNICATIONS	VSAT-TERMINAL INSTALLATIONS	\$200,000	NO	100%	YES	TN MINORITY SUPPLIER DEVELOPMENT COUNCIL
HBCU INTERNSHIP PROGRAM	JOB TRAINING	\$525,000	NO	N/A	N/A	
WRITE SOURCE	SUPPLIES-PENCILS	\$250,000	NO	51%	PENDING	
SPECIALIZED COMMUNICATIONS CO.	VSAT-TERMINAL INSTALLS	\$2,360,000	NO	51%	YES	DIS-ADVANTAGED BUSINESS ENTERPRISE
TG INCORP	OFFICE SUPPLIES	\$200	NO	100%	YES	SBA TN MINORITY SUPPLIER DEV COUNCIL
CREATIVE COLORS	TICKET STOCK PLAYSLIPS	\$27,500,000	NO	100%	PENDING	
LOTTERY SERVICES	FIELD SVC TECHS	\$11,800,000	NO	100%	YES	STATE PURCHASING DEPT.
CROSSTOWN COURIER	DELIVERIES	\$500	NO	100%	YES	

TOTAL COMMITMENT VALUE: \$43,097,200.00 over the seven- year term of this Agreement. Vendor's compensation under this Agreement is based on a percentage of sales; consequently the contract values noted herein are estimates based on anticipated sales. Vendor will facilitate the establishment of joint ventures, within twelve months of the execution of this Agreement, between its two Georgia based minority owned subcontractors noted herein—Creative Colors and Lottery Services—and Tennessee based minority owned businesses. It is the

LOTTERY GAMING SYSTEMS AND SERVICES AGREEMENT

intent of the parties that every effort be made to build the capacity of Tennessee based minority owned businesses to eventually assume the full responsibility of fulfilling the minority participation commitments under this Agreement.

TOTAL % OF MINORITY BUSINESS PARTICIPATION: *Vendor's EBO Program shall generate a minority business participation level of at least twenty percent (20%) of its revenues under this Agreement. Vendor at all times reserves the right to add, adjust and replace certified minority businesses in accordance with prudent business practices, but all such minority businesses shall nonetheless be certified.*

The successful bidder/proposer is required to finalize and submit this form prior to execution of a contract. Joint Venture Agreements, partnering agreements and all pertinent information must be presented in accordance with Section 3(b) of this Agreement. The finalized EBO Form B shall not be changed or altered after award of a contract without approval from the Corporation. The Vendor is required to provide written notice describing the reasons for the change to the Corporation to obtain approval of any changes to EBO Form B.

Submitted by:

Authorized Representative Signature

Title

Date

